

1 Bernard Curran
2 27 Escondido Ave.
3 San Francisco, California, 94132
4 (415) 516-4522
berndawgcurran@hotmail.com

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7 Defendant, IN PRO PER

FILED

NOV 14 2025

CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 PATRICK GALLAGER

) Case No.: 23-CV-03579-SI

11 Plaintiff,

) DEFENDANT'S REPLY IN SUPPORT OF
12 vs.) MOTION TO VACATE ENTRY OF
13 CITY AND COUNTY OF SAN FRANCISCO,) DEFAULT PURSUANT TO FED. R. CIV. P.
14 BERNARD CURRAN, RODRIGO SANTOS,) 55(c)
15 WILLIAM HUGEN, KEVIN BIRMINGHAM,)
16 NATALIA KWITKOWSKA, and JOE DUFFY.)
17 Defendants.

) DATE: November 14, 2025
18) TIME: 10:00AM
19) JUDGE: Hon. Susan Illston
20) DEPT: Courtroom 1 – 17th Floor, 450
21) Golden Gate Ave., San Francisco, CA 94102
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23)
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1 DEFENDANT RESPECTFULLY SUBMITS THIS REPLY IN SUPPORT OF DEFENDANT'S
2 MOTION TO VACATE ENTRY OF DEFAULT:

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1 **TABLE OF AUTHORITIES**

2 **Cases**

3 <i>Franchise Holding II, LLC v. Huntington Rests. Group, Inc.,</i>	
4 375 F.3d 922 (9 th Cir. 2004)	6
5 <i>Haw. Carpenters' Trust Funds v. Stone,</i>	
6 794 F.2d 508 (9th Cir. 1986)	7
7 <i>Lemoge v. U.S.,</i>	
8 587 F.3d 1188 (9 th Cir. 2009)	5
9 <i>TCI Group Life Ins. Plan v. Knoebber,</i>	
10 244 F.3d 691 (9 th Cir. 2000)	5,6
11 <i>US v. Mesle,</i>	
12 615 F. 3d 1085 (9 th Cir. 2010)	5

13 **Statutes**

14 Fed. R. Civ. P. 55(c)	5, 6, 7
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1 **I. INTRODUCTION & BACKGROUND**

2 Plaintiff's Opposition provides no valid basis for maintaining an entry of default. Under Federal
 3 Rule of Civil Procedure 55(c), the Court may set aside an entry of default for good cause, considering
 4 whether (1) the default was willful, (2) the defendant has a meritorious defense, and (3) setting aside
 5 the default would prejudice the plaintiff. Plaintiff argues that Defendant's conduct was culpable, that
 6 no meritorious defense exists, that he would be prejudiced, and that Defendant's evidence is
 7 unreliable. However, as demonstrated in Defendant's motion and supporting declarations,
 8 Defendant's delay was neither willful nor in bad faith, Defendant presents a meritorious defense, and
 9 Plaintiff will suffer no prejudice if the matter proceeds on the merits, as is preferred by the Ninth
 10 Circuit.

12 **II. ARGUMENT**

13 **A. Defendant's Conduct Was Not Culpable**

14 A defendant's conduct is culpable if he has received actual or constructive notice of the filing
 15 of the action and *intentionally* failed to answer. *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691,
 16 697 (9th Cir. 2000) (overruled on other grounds). Courts have held that excusable neglect or
 17 misunderstanding does not amount to culpable conduct. *Id.* Further, in *Mesle*, the Court found that an
 18 unsophisticated party's failure to reply was not "culpable conduct" because of an absence of any
 19 indication that he acted in bad faith. *US v. Mesle*, 615 F. 3d 1085, 1094 (9th Cir. 2010). Illness and
 20 hospitalization can be grounds for relief from entry of default. *Lemoge v. U.S.*, 587 F.3d 1188 (9th Cir.
 21 2009).

22 Plaintiff's argument that Defendant offers "no credible explanation for this delay" is
 23 contradicted by the record. Defendant has explained that he was undergoing treatment for Stage 3
 24 metastatic melanoma, and receiving immunotherapy, which affected both his cognitive and physical
 25 capabilities. (Decl. of Bernard Curran ¶ 4-6.) Defendant's condition and treatment is verified by his
 26
 27

1 treating physician's letters. (Decl. of Bernard Curran ¶ 8, 9.) Defendant did not intentionally fail to
 2 answer the lawsuit, rather it was due to his mental condition and incorrect good faith belief that the
 3 City and County of San Francisco was addressing the lawsuit with Plaintiff. (Decl. of Bernard Curran
 4 ¶ 4.) Plaintiff offers no evidence that Defendant intentionally ignored this case or at any time sought
 5 to evade service. Defendant's conduct was not culpable because he lacked the requisite bad faith.

6 **B. Defendant Possesses Meritorious Defenses**

7 Plaintiff's reliance on *Franchise Holding II, LLC v. Huntington Rests. Group, Inc.*, 375 F. 3d
 8 922 (9th Cir. 2004), is misplaced. In that case, the defendant, made conclusory statements with no
 9 supporting facts or evidence. Here, by contrast, Defendant has provided the factual basis for his
 10 defense – that he did not engage in the alleged conduct. (See Def.'s Mot. To Vacate Entry of Default,
 11 p.7, lines 11-14.) Defendant offers sworn declarations, along with supporting documentation, that if
 12 proven true, would constitute a defense on the merits. Defendant has shown the "meritorious defense"
 13 required by Rule 55(c).

14 **C. Vacating Default Will Not Prejudice Plaintiff**

15 The mere passage of time does not constitute prejudice. *TCI Group*, 244 F.3d at 701.
 16 Plaintiff's claim of prejudice rests solely on the fact this case was filed in 2021. Plaintiff identifies no
 17 tangible financial harm. Moreover, the concurrent lawsuit against the City and County of San
 18 Francisco, arising from the same facts, remains at issue and is being actively litigated. Given the
 19 issues in that case that remain unresolved, Plaintiff will not be prejudiced by allowing this matter to
 20 proceed on the merits.

21 **D. Defendant's Evidence Is Authentic**

22 Plaintiff's accusation that Defendant's medical evidence suggests "possible forgery" and is
 23 "photoshopped" is wholly unfounded. Defendant submits sworn declarations from his treating
 24 medical physicians confirming the authenticity of the letters and the accuracy of Defendant's

1 statement regarding his diagnosis and treatment. (See Decl. of Dr. Sal Fazio; *see also* Decl. of Dr.
2 Alfredo Lopez) Defendant did not disclose his medical records, prescriptions, and treatments because
3 he does not wish to waive doctor-patient privilege or make his intimately personal medical
4 information public record. Plaintiff's argument that Defendant's evidence is unreliable should be
5 disregarded.

6 **E. Defaults Are Disfavored**

7 Defaults are disfavored and courts cases should be decided on the merits. Courts in this Circuit
8 strongly favor resolving cases on the merits rather than by default. *Haw. Carpenters' Trust Funds v.*
9 *Stone*, 794 F.2d 508, 511 (9th Cir. 1986).

10 **III. CONCLUSION**

11 For the foregoing reasons, Defendant respectfully requests that this Court grant the Motion to
12 Vacate Entry of Default. Defendant's delay in responding was not willful, Defendant has meritorious
13 defenses, and Plaintiff will not suffer any prejudice in pursuing his claims if default is set aside. This
14 constitutes excusable neglect and good cause under Rule 55(c). Defendant has demonstrated a
15 meritorious defense supported by credible evidence. Consistent with the Ninth Circuit's preference
16 for resolving disputes on the merits, the Court should vacate entry of default against Defendant.

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18 DATED: November 13, 2025



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Bernard Curran
In Pro Per

Bernard Curran
27 Escondido Ave.
San Francisco, California, 94132
(415) 516-4522
berndawgcurran@hotmail.com

Defendant, IN PRO PER

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

PATRICK GALLAGER

) Case No.: 23-CV-03579-SI

Plaintiff,

|) DECLARATION OF DR. SAL FAZIO IN
|) SUPPORT OF DEFENDANT'S REPLY IN
|) SUPPORT OF MOTION TO VACATE
|) ENTRY OF DEFAULT PURSUANT TO
|) FED. R. CIV. P. 55(c); EXHIBIT

CITY AND COUNTY OF SAN FRANCISCO,
BERNARD CURRAN, RODRIGO SANTOS,
WILLIAM HUGEN, KEVIN BIRMINGHAM,
NATALIA KWAKTOWSKA, and JOE DUFF

DATE: November 14, 2025

TIME: NOVEMBER

JUDGE: Hon. Susan Illston

| DEPT: Courtroom 1 - 17th Floor, 450
| Golden Gate Ave., San Francisco, CA 94102

Defendants.

三

**KAISER PERMANENTE
3900 LAKEVILLE HIGHWAY
PETALUMA, CA 94954**

DECLARATION OF DR. SAL FAZIO

1 I, Dr. Sal Fazio, declare as follows:

2 1. I have personal knowledge of the facts contained in this declaration, and if called as a witness,
3 I could and would testify competently to the facts as stated herein.

4 2. I am a physician licensed to practice medicine in the State of California and maintain an active
5 license, number [License Number]. My professional business address is [Doctor's Office Address
6 and Phone Number.]

7 3. I am the treating physician of Defendant Bernard Curran, with whom I have a doctor-patient
8 relationship.

9 4. I am the author of the medical letter dated September 22, 2025, submitted by Defendant
10 Benard Curran in connection with his Motion to Vacate Entry of Default Judgement.

11 5. The letter in question was written and signed by me. It accurately reflects my medical
12 assessment and treatment of Bernard Curran.

13 6. The letter is authentic and has not been forged or "photoshopped." It was drafted and issued
14 by me as part of my professional care and communication regarding Bernard Curran's medical
15 condition and treatment.

16 7. Attached hereto as **Exhibit A** is a true and correct copy of my letter, written on behalf of
17 Bernard Curran, explaining his medical condition.

18 8. I make this declaration to confirm the authenticity and accuracy of the documents in question.

19
20 I declare under penalty of perjury that the foregoing is true and correct.

21 DATED: November 10, 2025



Dr. Sal Fazio
NPI 1174601769

25
26 KAISER PERMANENTE
27 3900 LAKEVILLE HIGHWAY
28 PETALUMA, CA 94954

EXHIBIT A



Date printed: 9/29/2025

Kaiser Permanente Member name:

Bernie J Curran

Date of birth: 10/14/1960

MRN: 110001693096

**The
Permanente
Medical
Group, Inc.**

**ADULT AND FAMILY
MEDICINE**

3900 LAKEVILLE

HWY

PETALUMA CA

94954-5698

Dept: 707-765-3960

Main: 707-765-3900

September 22, 2025

Re: Bernard J Curran
27 Escondido Avenue
San Francisco CA

94132

To Whom it May
Concern,

I am the primary care physician for Mr. Bernie Curran. Mr. Curran notified me that he missed a court date in the month of February 2025 and attributes it to his multiple medical problems that he was dealing with at that time. Mr. Curran had previously received treatment for a serious chronic medical condition which was causing him side effects of extreme fatigue, and some associated cognitive symptoms which resulted in some memory problems at the time. Please take this into consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "S. J. De" followed by a surname.

SAL FAZIO MD

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2025, patents pending.

Bernard Curran
27 Escondido Ave.
San Francisco, California, 94132
(415) 516-4522
berndawgcurran@hotmail.com

Defendant, IN PRO PER

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DECLARATION OF DR. ALFREDO LOPEZ

1 I, Dr. Alfredo Lopez, declare as follows:

2 1. I have personal knowledge of the facts contained in this declaration, and if called as a witness,
3 I could and would testify competently to the facts as stated herein.

4 2. I am a physician licensed to practice medicine in the State of California and maintain an active
5 license, number [License Number]. My professional business address is [Doctor's Office Address
6 and Phone Number.]

7 3. I am the treating physician of Defendant Bernard Curran, with whom I have a doctor-patient
8 relationship.

9 4. I am the author of the medical letter dated September 29, 2025, submitted by Defendant
10 Benard Curran in connection with his Motion to Vacate Entry of Default Judgement.

11 5. The letter in question was written and signed by me. It accurately reflects my medical
12 assessment and treatment of Bernard Curran.

13 6. The letter is authentic and has not been forged or "photoshopped." It was drafted and issued
14 by me as part of my professional care and communication regarding Bernard Curran's medical
15 condition and treatment.

16 7. Attached hereto as **Exhibit B** is a true and correct copy of my letter, written on behalf of
17 Bernard Curran, explaining his medical condition.

18 8. I make this declaration to confirm the authenticity and accuracy of the documents in question.

19
20 I declare under penalty of perjury that the foregoing is true and correct.

21 DATED: November 10, 2025



Dr. Alfredo Lopez

The Permanente Medical Group, Inc.
2238 Geary Blvd., 8th Fl., 8SE
San Francisco, CA 94115
Phone: 415-823-3692
Lic #: G36 323

EXHIBIT B



Date printed: 9/29/2025

Kaiser Permanente Member name:

Bernie J Curran

Date of birth: 10/14/1960

MRN: 110001693096

**The
Permanente
Medical
Group, Inc.**

HEMATOLOGY/ONC

OLOGY DEPT

2238 GEARY BLVD

SAN FRANCISCO CA

94115-3416

Dept: 415-833-3692

Main: 415-833-2000

September 29, 2025

Bernard J Curran
27 Escondido
Avenue
San Francisco CA
94132

To Whom It May
Concern:

Mr. Curran is a patient at the San Francisco Kaiser Medical Center. Mr Curran had been undergoing therapy for a cancer condition from October 2024 through April 2025.

During this period patient experienced a number of side effects and complications including hospitalizations for side effects of the therapy. For this reason the patient missed his February court date. The member is now doing much better off therapy. I wish to explain to the court the reason for Mr. Curran's missed court date.

Please feel free to

contact my office if
you are in need of
further information

Sincerely,

**ALFREDO R
LOPEZ MD**

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2025, patents pending.

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